

REMARKS

Applicant thanks the Examiner for the very thorough consideration given the present application.

Claims 1-7 are now present in this application. Claims 1, 4, 6 and 7 are independent.

Amendments have been made to the specification, claims 6 and 7 have been added, and claims 1-5 have been amended. No new matter is involved. Reconsideration of this application, as amended, is respectfully requested.

Priority Under 35 U.S.C. §119

Applicant thanks the Examiner for acknowledging Applicant's claim for foreign priority under 35 U.S.C. §119, and receipt of the certified priority document.

Specification Amendments

Applicant has amended the specification in order to correct minor typographical errors, to clarify the meaning of "by multi-stage", and to place the specification in better form. No new matter is involved. Support for the changes to the specification regarding the multiple loading stages of the disk are found throughout the specification and drawings, including Figs. 2-4 and the portions of the specification pertaining thereto.

Rejection Under 35 U.S.C. §112, 2nd Paragraph

Claims 1, 4 and 5 stand rejected under 35 U.S.C. §112, 2nd Paragraph.

This rejection is respectfully traversed.

The Examiner has set forth certain instances wherein the claim language is not clearly understood.

In order to overcome this rejection, Applicant has amended claims 1, 4 and 5 to correct each of the deficiencies specifically pointed out by the Examiner. In particular, the terminology "multi-stage" has been replaced with --multiple loading stages of the disk--. Support for this language is found in the originally filed disclosure not in those exact words, but in the description of the multiple loading stages of an optical disk, for example, in pages 6-8, with reference to Figs. 2, 3 and 4. Applicant respectfully submits that the claims, as amended, particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Accordingly, reconsideration and withdrawal of this rejection are respectfully requested.

Rejections under 35 U.S.C. §103

Claims 1, 4 and 5 stand rejected under 35 U.S.C. §103(a) as being unpatentable over JP 60-136059 further considered with JP 4-19827 and U.S. patent 5,721,715 to Mitani et al. (hereinafter, "Mitani"). This rejection is

respectfully traversed.

A complete discussion of the Examiner's rejection is set forth in the Office Action, and is not being repeated here.

Initially, Applicant notes that although the rejection refers to the Abstract of JP 60-136059, no English language Abstract for this reference was provided. Applicant obtained an English language abstract of this reference from the Japanese Patent Office website.

Based on that English language website, it appears to Applicant that JP 60-136059 discloses sensing whether or not a disk 2 is loaded by mistake and using a CPU to eject the disk.

No English language abstract was provided for JP 4-19827 by the Office, either. Applicant also obtained an English language abstract of this reference from the Japanese Patent Office website.

Based on that English language abstract, it appears to Applicant that, in JP 4-19827, if a reproducing operation is being conducted with an optical disk that has a chucking defect, a tracking error signal exceeds a normal allowance range. When a chucking defect is detected, the disk is ejected to avoid breakage of the disk.

Mitani discloses a control system for a disk player that has a rotatable magazine. In Mitani, a disk loading process is illustrated in Figs. 38-42 and described starting in col. 41, line 10. The disk loading process is concerned with

loading a disk from a circular magazine 3 into a disk insertion-discharge means

4. Mitani detects disc insertion errors – see, for example, from col. 22, lines 34-38 to col. 23, line 31. One disclosed disk insertion error is the wrong size disk, e.g., insertion of an 8-cm disk instead of a 12-cm disk. Applicant has reviewed Mitani and is unable to find any disclosure in Mitani of a disk jam detection feature.

Applicant cannot find in any of the three applied references, a disclosure of, among other claimed features, determining when an optical disk has been jammed in an optical disk driver, and/or transmitting loading status data to a host connected through an interface in case that the disk has been jammed recited.

So, even if these references were properly combined, and Applicant contends that they are not properly combined for reasons discussed below, the reference combination would not render the claimed invention obvious.

The Office Action must address the invention as a whole, which includes all recited features. This rejection clearly does not address the two aforementioned recited features, let alone provide objective evidence of where those features are found in the applied references.

The alleged reason to combine these references is “to provide a more robust disk loading state monitoring system (instead of one state/condition, multiple states/conditions). The ability to ensure proper disk loading in a player

predicated on multi-conditions will provide for less false positives.”

Applicant respectfully submits that the allegation of making the system more robust and providing for less false positives is sheer speculation. It is well settled that a rejection under 35 USC §103 cannot properly be based on speculation but must be based on objective factual evidence of record. See, In re Warner, 379 F.2d 1011, 1017, 154 USPQ 173, 178 (CCPA 1967), cert. denied, 389 U.S. 1057 (1968). See, also, In re GPAC, Inc., 35 USPQ2d 1116 at 1123 (Fed. Cir. 1995) and Ex parte Haymond, 41 USPQ2d 1217 at 1220 (Bd. Pat. App. & Int. 1996).

A factual inquiry whether to modify a reference must be based on objective evidence of record, not merely conclusory statements of the Examiner. See, In re Lee, 277 F.3d 1338, 1343, 61 USPQ2d 1430, 1433 (Fed. Cir. 2002).

Moreover, the allegation of making the system more robust and providing for less false positives is a broad generic conclusion unsupported by objective factual evidence and, standing alone, is not “evidence” of proper motivation to combine these references. See In re Dembiczak, 175 F.3d 994 at 1000, 50 USPQ2d 1614 at 1617 (Fed. Cir. 1999).

Accordingly, the Office Action fails to make out a *prima facie* case of proper motivation to combine these references and, therefore, fails to make out a *prima facie* case of obviousness of the claimed invention.

Furthermore, exactly how the primary reference is to be modified by the

secondary reference and/or how that combination is to be modified by the tertiary reference is not set forth in any detail. All the Office Action states in this regard is "[I]t would have been obvious to modify the base system of JP 60-136059 and modify such with the above teachings from both JP 4-19827 and Mitani et al. . ." Applicant is given no indication of what features of the base reference are modified by what features of the secondary and tertiary references, and how those unspecified features are to be modified.

Accordingly, this rejection is fundamentally flawed and denies Applicant the fundamental substantive and procedural due process required to be given patent applicants under the Administrative Procedures Act. See in this regard, In re Zurko, 119 S.Ct. 1816, 50 USPQ2d 1930 (1999), and In re Gartside, 53 USPQ2d 1769 (Fed. Cir. 2000).

Reconsideration and withdrawal of this rejection is respectfully requested.

Claims 2 and 3 stand rejected under 35 U.S.C. §103(a) as being unpatentable over JP 60-136059 further considered with JP 4-19827 and U.S. patent 5,721,715 to Mitani et al. (hereinafter, "Mitani"), and further in view of U.S. Patent 4,995,027 to Aoyagi et al. (hereinafter, "Aoyagi"). This rejection is respectfully traversed.

A complete discussion of the Examiner's rejection is set forth in the Office Action, and is not being repeated here.

Initially, Applicant respectfully submits that the JP 60-136058, JP 4-19827, and Mitani reference combination does not render obvious claim 1, from which claims 2 and 3 depend, for the reasons stated above. Moreover, Aoyagi is not applied to remedy the deficiencies of this three reference combination.

Accordingly, even if it were proper to modify the aforementioned reference combination using Aoyagi, the further modified reference combination would not render the invention recited in claims 2 and 3 obvious.

Moreover, as pointed out above, Mitani discloses a disk size determination feature. Because of this, there is no need to look further to Aoyagi to provide this feature. In other words, because Mitani discloses such a feature, one of ordinary skill in the art would have no incentive to look to Aoyagi to provide such a feature.

As a result, the Office Action fails to provide proper motivation to look to Aoyagi to modify the aforementioned reference combination, which does not render the claimed features obvious at least for the reasons stated above regarding the traversal of the rejection of claim 1.

Accordingly, reconsideration and withdrawal of this rejection is respectfully requested.

New Claims

Claims 6 and 7 have been added for the Examiner's consideration.

Applicant submits that claims 6 and 7, which recite system claims corresponding to the methods recited in claims 1 and 4 are allowable for the reasons that claims 1 and 4 are allowable, as set forth above. Support for these claims is found throughout the originally filed Application.

Additional Cited References

Since the remaining references cited by the Examiner have not been utilized to reject the claims, but have merely been cited to show the state of the art, no comment need be made with respect thereto.

Conclusion

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance.

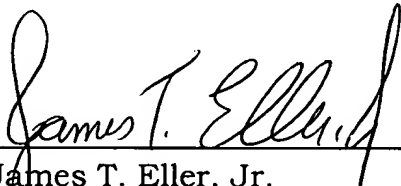
If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone Robert J. Webster, Registration No. 46,472, at (703) 205-8000, in the Washington, D.C. area.


Prompt and favorable consideration of this Amendment is respectfully requested.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By: 
James T. Eller, Jr.
Reg. No.: 39,538

JTE/RJW/adt 

P.O. Box 747
Falls Church, Virginia 22040-0747
Telephone: (703) 205-8000

Attachment: Abstract of the Disclosure